

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JAMAAL A. MCNEIL,)	8:07CV143
)	
Plaintiff,)	
)	
v.)	MEMORANDUM AND
)	ORDER
CITY OF OMAHA, et al.)	
)	
Defendants.)	

This matter is before the court on Defendants' Response to Order to Show Cause and Request For Leave to File Amended Motion to Dismiss. (Filing No. 39.) On January 30, 2008, the court entered a Memorandum and Order directing the City of Omaha to show cause why Plaintiff is not entitled to judgment by default for the City's failure to plead or otherwise defend pursuant to Federal Rule Civil Procedure 55. (Filing No. 38.) The court noted that while the City of Omaha filed a Motion to Dismiss on behalf of its police officers, the City has not filed a responsive pleading on its own behalf. (*See* Filing No. 38. at CM/ECF p. 2.)

In their response to the January 30, 2008 Order, Defendants request leave to amend the August 30, 2007 Motion to Dismiss (filing no. 31) and attached an Amended Motion to Dismiss (filing no. 39) and corresponding brief (filing no. 40). Defendants state that the August 30, 2007 Motion to Dismiss (filing no. 31) and corresponding brief (filing no. 32) were both intended to be filed on behalf of the City of Omaha as well as Officers Warnock and Ringhoff. However, when the documents were electronically filed on the CM/ECF system, Defendants City of Omaha and Omaha Police Department were inadvertently omitted from the caption of the Motion to Dismiss and brief. Defendants state that the intent to include the City and the police department is evidenced by the contents of both the motion and the corresponding brief. Defendants argue that no harm will come to Plaintiff by

allowing amendment of the Motion to Dismiss because the defenses set forth in the August 30, 2007 Motion to Dismiss and corresponding brief, are identical to those which would have been presented had the City been properly included on the caption.

For good cause shown, the court will grant Defendants leave to amend the August 30, 2007 Motion to Dismiss. Accordingly, the court accepts for filing the Amended Motion to Dismiss (filing no. 39) and supporting brief (filing no. 40). These documents will supercede the August 30, 2007 Motion to Dismiss (filing no. 31) and corresponding brief (filing no. 32.)

IT IS THEREFORE ORDERED that:

1. Defendants' Motion for Leave to File Amended Motion to Dismiss (filing no. 39) is granted.
2. The Clerk of the court is directed to terminate Defendants' original Motion to Dismiss (filing no. 31) and send Plaintiff a copy of this order, the Amended Motion to Dismiss (filing no. 39), and the corresponding brief (filing no. 40) at his current address of record.
3. Plaintiff shall have 20 days after the receipt of the Amended Motion to Dismiss (filing no. 39) and the accompanying brief (filing no. 40) to file a response to the Amended Motion to Dismiss, and Defendants shall have five (5) business days after Plaintiff has filed his response to file a reply, if desired.
4. The Clerk of the court is directed to set a pro se case management deadline using the following text: March 7, 2008 Motion to Dismiss (filing no. 39) ripe for disposition upon receipt of Defendants' reply.

February 6, 2008.

BY THE COURT:

s/Richard G. Kopf
United States District Judge